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#### LEAGUE OF CONSERVATION VOTERS

#### VIA E-MAIL AND FEDEX

Mr. Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints, Examination & Legal Administration
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

**RE: MUR 7029** 

Dear Mr. Jordan:

On behalf of the League of Conservation Voters, Inc. ("LCV"); League of Conservation Voters Action Fund ("LCVAF"), and Patrick Collins, as Treasurer; and LCV Victory Fund (the "Victory Fund"), and Patrick Collins, as Treasurer (collectively "LCV Entities"), I am replying to the complaint filed by the Republican Party of Pennsylvania on March 21, 2016, alleging that LCV Entities illegally coordinated independent expenditure efforts with United States Senate candidate Katie McGinty and her campaign in the primary election. For the reasons set forth below, I respectfully request that the Federal Election Commission ("FEC" or "Commission") find no reason to believe that any of the LCV Entities violated the Federal Election Campaign Act of 1971, as amended ("FECA") or the FEC's regulations and dismiss the matter with no further action.

## LCV, LCVAF and the Victory Fund did not illegally coordinate independent expenditures in violation of 11 C.F.R. § 109.21 in the 2016 Pennsylvania Senate primary election.

The Complaint accuses LCV Entities of "illegally . . . coordinating independent expenditure efforts" with the campaign of Katie McGinty in the 2016 primary election. Complaint at 3. Complainant fails, however, to identify any independent expenditure by LCV, LCVAF or the Victory Fund, or any specific public communications that are alleged to have been coordinated. LCV Entities directly refute these speculative charges. As is evident from the reports filed, and those that will be filed with respect to the period leading up to the primary election, by all three LCV Entities with the FEC, no LCV entity made, paid for, authorized, created, produced, or distributed any public communications that constitute independent expenditures in the 2016 Pennsylvania Senate primary election. Because no LCV entity made any coordinated communications in violation of 11 C.F.R. § 109.21 in the

<sup>&</sup>lt;sup>1</sup> LCVAF made in-kind and direct contributions to Katie McGinty for Senate which are reported on the relevant FEC Forms 3X.

primary election, there is no basis for Complainant's allegation of illegal coordination by LCV Entities. Moreover, to the extent that the Complaint suggests that LCV supported the independent expenditures of EMILY's List, that allegation is similarly incorrect. LCV Entities have not made any contributions to EMILY's List or Women Vote! since Katie McGinty announced her candidacy for U.S. Senate in August 2015.

Complainant's allegations fail because there were no communications by LCV Entities that violated 11 C.F.R. § 109.21. In order to determine whether a communication is "coordinated" with a candidate, a candidate's authorized committee, a political party committee or an agent of the foregoing. Commission regulations provide a three-prong test: (1) there must be a communication paid for by a person other than that candidate, authorized committee, or political party committee; (2) one or more of the content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied; and (3) one or more of the conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied. See 11 C.F.R. § 109.21(a). All three prongs of the test must be satisfied. 68 Fed. Reg. 426 (Jan. 3, 2003).<sup>2</sup> In order to satisfy the first two prongs of the definition, there must be a public communication that satisfies the content standard, paid for by a person other than the candidate, authorized committee, or political party committee. Contrary to the Complaint, and the reported statement of former Governor Ed Rendell, none of the LCV Entities made or paid for any public communications, including television commercials, in violation of this provision on coordinated communications in the Pennsylvania primary race for Senate. The alleged illegal coordination of independent expenditures by LCV Entities did not occur.

### The Complaint is mere speculation unsupported by any facts sufficient to find reason to believe that LCV Entities violated the FECA or the FEC's regulations.

A complaint must "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3). The Commission's 2007 Statement of Policy further states that "a reason to believe finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred." Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12546 (March 16, 2007). Applying this standard, the Commission has previously concluded that a "reason to believe" finding is justified only if a complaint sets forth sufficient specific facts which if proven true would constitute a violation of the FECA, and has stated that unwarranted legal conclusions from asserted facts or mere speculation in a complaint would not be accepted as true. See, e.g., Statement of Reasons of Commissioners Mason, Sandstrom, McDonald, Smith, Thomas, and Wold in MUR 5141 (April 17, 2002).

<sup>&</sup>lt;sup>2</sup> In light of the fact that the first two prongs of the test are not met, it is not necessary to proceed to an analysis of the conduct standard. It is worth noting with respect to the conduct standard, however, that to the extent that one or more LCV Entities makes coordinated communications and independent expenditures in a federal election, LCV staff working on these programs are required to receive training on, acknowledge and sign a firewall policy that sets out the legal separation and requirements related to these activities in compliance with 11 C.F.R. § 109.21.

The Republican Party of Pennsylvania's complaint falls far short of this standard, relying on mere speculation in alleging that LCV Entities illegally coordinated with the McGinty campaign without any evidence that LCV Entities satisfied the threshold test of making a payment for an independent expenditure in the primary election. The Complaint relies solely on a statement by Ed Rendell referenced in *Politico Morning Score*, that Rendell "believed EMILY's List would spend at least \$2 million on television," in the Pennsylvania Senate primary race "with the [sic] some of the cash coming from the League of Conservation Voters." Complaint at 3. This statement is nothing more than Rendell's *belief* as to what would be spent in the primary race. The Commission has found that a complaint that provides no specific facts, relying instead purely on speculation, "do[es] not form an adequate basis to find reason to believe that a violation of the FECA has occurred." MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 3 ("[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.").

For the foregoing reasons, we respectfully request that the Commission dismiss the Complaint and take no further action.

Sincerely,

Richard L. Thomas General Counsel

cc: Holly Schadler